

Preventing The Potential Tax Avoidance in Government Regulation Of The Republic Of Indonesia Number 23 Of 2018

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Article Info	Abstract
<p>Article History</p> <p>Received: November 06, 2020</p> <p>Accepted: January 27, 2021</p> <hr/> <p>Keywords MSMEs, Tax Planning, Presumptive Tax.</p> <p>DOI: 10.5281/zenodo.4515858</p>	<p><i>In July 2018 the government issued Government Regulation of the Republic of Indonesia Number 23 of 2018 in lieu of the Government Regulation of the Republic of Indonesia Number 46 of 2013. Both of these provisions are intended for Micro, Small, and Medium Enterprises (MSMEs). This study aims to determine the differences between the Government Regulation of the Republic of Indonesia Number 23 of 2018 and Government Regulation of the Republic of Indonesia Number 46 of 2013 and to identify how the implementation of Government Regulation of the Republic of Indonesia Number 23 of 2018 has potential of tax avoidance. The research methodology is descriptive qualitative. The results show that there are differences between the Government Regulation of the Republic of Indonesia Number 23 of 2018 and Government Regulation of the Republic of Indonesia Number 46 of 2013 viewed from various aspects such as tax subjects, tax objects and their exceptions, aspects of justice, and others. Based on the comparison of the implementation of those regulations, the potential of tax avoidance is found. It is done by the taxpayers by shifting gross circulation through forming a new business entity. The reason is that corporate taxpayers newly established/registered can immediately use the final income tax rate in the provisions of the Government Regulation of the Republic of Indonesia Number 23 of 2018.</i></p>

Introduction

Background

The crisis that was experienced by Indonesia in 1998 caused the national economy to deteriorate and some large-scale companies went bankrupt. In the midst of the monetary crisis that occurred, Micro, Small, and Medium Enterprises (MSMEs) became one of the businesses that were able to survive. In the national economy, MSMEs could develop consistently (Darwanto, Tri and Danuar, 2013). Based on data from the Central Statistics Agency, after the 1998 crisis, the number of MSMEs tends to increase in growth. Even though the trend had experienced a decline, until 2013 the number of MSMEs had always increased. This fact shows that MSMEs can withstand crisis attacks.

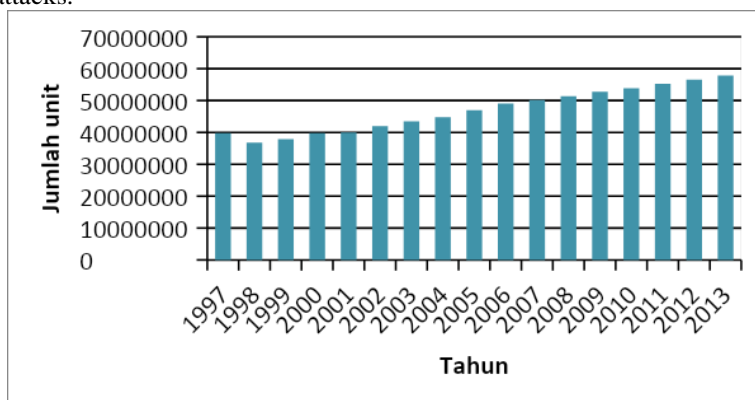


Figure 1 Graph of MSME Development in the Period 1997 - 2013

Source: www.bps.go.id

The Central Bureau of Statistics in the SE2016-Continued Results Analysis, provided information that the contribution of MSMEs to Gross Domestic Product (GDP) was 60.34%. MSMEs was also capable of absorbing more than 59 million Indonesian workers or around 75.33% of the total non-agricultural workforce. In 2017, the number of non-agricultural MSEs in Indonesia reached around 26 million businesses, or 98.68% of the total number of businesses in Indonesia. Based on data from the Central Statistics Agency, in 1998 the contribution of constant price GDP from MSMEs was 552,945.40 billion rupiah and experienced a growth of 52.24% from

the previous year. However, in the taxation sector, MSMEs have not yet reflected the maximum contribution as its effect on the economy and employment (Suryani *et al*, 2019).

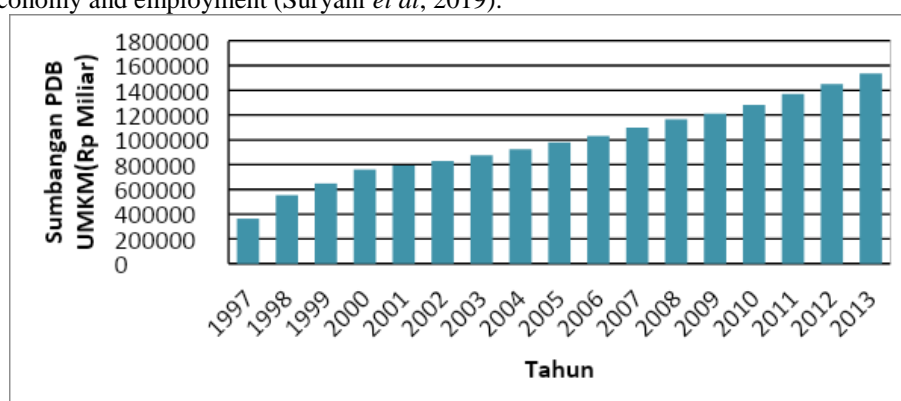


Figure 2 MSME GDP Contribution from 1997 - 2013

Source: www.bps.go.id

To overcome the problem of MSMEs' contribution, the government issued Government Regulation Number 23 of 2018 concerning Income Taxes on Income from Businesses Received or Earned by Taxpayers with Gross Turnover Certainly as a lieu of Government Regulation Number 46 of 2013 which has been in effect for five years to provide convenience for MSMEs in carrying out their tax obligations.

The policy started to be applied since July 1, 2018. The most striking change is the decrease of the tax rate from 1% to 0.5% final. However, in addition to changes in tax rates, there are also several things that differentiate between the provisions in Government Regulation Number 23 of 2018, which is hereinafter referred to as PP* 23 of 2018 compared to Government Regulation Number 46 of 2013, hereinafter referred to as PP 46 of 2013 Article 2 paragraph (4) PP 46 of 2013 states that:

"Not included as corporate taxpayers as referred to in paragraph (2) are: a. Corporate taxpayers not yet operating commercially, b. Corporate taxpayers who within a period of 1 (one) year after operating commercially obtain gross turnover exceeding Rp4,800,000,000.00 (four billion eight hundred million rupiah) "

Based on this regulation, corporate taxpayers can use this final income tax if the business has been operating commercially for one year. Whereas in PP 23 of 2018 there is no such clause. Thus, according to PP 23 of 2018, if the taxpayer meets the requirements as a taxpayer who is subject to final Income Tax based on this Government Regulation, since taxpayers are registered, they are not subject to the general rate of Article 17 of the Income Tax Law, but can immediately use PP 23 of 2018 until the time limit which has been stipulated in the rule.

Based on the provisions of PP 23 of 2018, if the taxpayer decides to be subject to Income Tax at the rate of Article 17 paragraph (1) letter a, Article 17 paragraph (2a), or Article 31E of the Tax Law Income, the taxpayer must submit a notification to the Director General of Tax. With these two options, PP 23 of 2018 provides an opportunity for taxpayers to choose using a more profitable tax mechanism. This provision does not exist in PP 46 of 2013.

In PP 23 of 2018, there is also a provision regarding the period for using this final income tax rate. The existence of a certain period of time is intended as a learning period for taxpayers to be able to keep an accountancy before finally being subject to Income Tax at the general rate. Therefore, after the period ends, taxpayers will be subject to the rate of Article 17 of the Income Tax Law.

Based on the observations of researchers, in the provisions of PP 23 of 2018, there is the potential for *tax avoidance*. The potential for *tax avoidance* can occur when taxpayers find transactions that are more profitable if they use PP 23 of 2018. The method is that corporate taxpayers who due to the provisions are no longer allowed to use PP 23 of 2018 form a new entity so that they can use the final rate again based on the tax rate in PP 23 of 2018. The reason is that new corporate taxpayers can immediately be subject to final income tax based on PP 23 of 2018. In tax administration, *tax avoidance* is an effort made in order to take advantage of loopholes in legal rules so as not to violate the law (Rahayu 2010).

Based on the explanation above, researchers are interested in deepening the discussion about this issue. The study also aimed to describe differences between PP 46 in 2013 and PP 23 in 2018 and to describes the potential *tax avoidance* in PP 23 in 2018 as a substitute of PP 46 in 2013.

1. THEORETICAL FRAMEWORK AND DEVELOPMENT OF HYPOTHESES

1.1. Previous Research.

*PP is the abbreviation of *Peraturan Pemerintah* (Government Regulation) in Indonesia.

Based on the results of a study conducted by Fauziah (2018), *tax planning* that could be carried out by MSMEs was to take advantage of the use of tax rates. In this study, the conclusion was that MSMEs that should use tax rates in accordance with PP 23 of 2018 were private MSMEs with net income above 6% and corporate MSMEs with net income above 4%. Then, the MSMEs that should use the Article 17 tax rate of the Income Tax Law were private MSMEs with a net income below 6%. Meanwhile, the MSMEs that should use the facilities of Article 31E of the Income Tax Law were the MSMEs Entities with a net income of less than 4%.

The results of research conducted by Hasanah(2018) stated that PP 23 of 2018 could slightly lighten the nominal tax payments for MSME players compared to PP 46 of 2013 after conducting a comparative analysis between the two regulations. However, MSME players must also be able to consider financial capacity and administrative capacity to use PP 23 of 2018 which is optional because the basis for determining the basis for tax collection is gross income not net income.

The results of Kesuma's research (2010) concluded that taxpayers must really master the character of their business field and understand the applicable tax laws and regulations related to their business sector in carrying out tax planning. In addition, taxpayers also needed to consider the costs and benefits of choosing alternative tax planning to be carried out.

1.2. The Concept of Income in Taxation

Goode (1977) in Darussalam (2019) concluded that the use of the definition of income depended on the framework and objectives to be achieved. In the implications of an income tax scheme, the meaning of "income" has an important function. The meaning of this term will determine who the tax subject is and what the tax rate is as well as how much tax the tax subject needs to pay (Mansury, 1992 in Darussalam, 2019).

One concept of understanding income in context is the concept of accretion. The definition of income in the accretion concept was developed by three economists in the field of tax, namely Schanz, Haig, and Simons so that the concept was known as the *SHS Concept* (Darussalam, 2019). *SHS Concept* formulates that income is calculated from consumption plus changes in the value of wealth at the beginning and end of the period. This formula is widely followed in the Income Tax Law, it is indicated by the use of the phrase 'can be used for consumption and increase wealth'. In the Income Tax Law, the use of the *SHS Concept* can also be shown by the definition of the term "income" which is clearly visible from the words "additional economic capacity" as a formulation of the term income (Gunadi, 2013).

In the world of taxes, the *SHS* accretion concept is one of the income concepts that has the most influence on tax policies in various countries. The reason is that this concept is considered to be the best concept reflecting justice and is also easy to apply. Furthermore, the definition of income based on this concept has received a predicate as a definition of generally accepted income (Genser, 2006 in Darussalam, 2019).

1.3. Principles of Taxation

In the book *Wealth of Nation*, AdamSmith (1723 - 1790), put forward the principle of tax collection known as *The Four Maxims* which is quoted in Husen (2009), namely:

1. *Equality*, namely the principle of tax collection where the tax imposed must be in accordance with the ability (*ability to pay*) and the tax collected must also be proportional to the benefits taxpayers receive.
2. *Certainty*, which is the principle where tax collection is not carried out arbitrarily. People who are subject to tax must obtain clear, legal certainty, the amount of tax that is borne by them, the period of payment, and the maximum length of time the payment is made. Tax determination must be transparent and in accordance with applicable laws in each country. Thus, taxpayers who do not or are late paying taxes will be subject to sanctions or penalties that have been clearly regulated in advance. Likewise, tax officers must be subject to sanctions or penalties if they commit fraud in the tax collection process.
3. *Convenience* is the principle whereby tax collection should be carried out at a time that makes it easier for the party to be taxed. For example, taxes are collected when the taxpayer receives income. Such a system is called *Pay as You Earn* which can be interpreted as paying taxes when the taxable income is received.
4. *Economics*, namely tax collection should be done efficiently. This principle emphasizes that the amount of tax revenue on collection implemented must be greater than the cost of implementing the tax collection.

1.4. Carrying Capacity Theory

According to this theory, everyone is required to pay taxes according to their respective carrying capacity. According to Prof. WJ de Langen as quoted by Rochmat Soemitro in Pudyatmoko (2006), carrying capacity was the amount of a person's ability to carry the burden by using the residual income he received after deducting expenses that are absolute for his primary life.

The carrying capacity in this taxation concept can be likened to a bridge as termed by Mr. Ir. Cohen Stuart, where the carrying power of the bridge was measured by reducing the overall strength of the bridge with its own weight. Thus, it can be understood that what is meant by carrying capacity was not only seen from the total income earned, but firstly the income reduced by absolute expenses (Pudyatmoko, 2006).

This theory is also referred to as the bearing force in which this theory directs if tax collection must match the ability of the taxpayer to pay. The tax burden must be in accordance with the taxpayer's bearing style by looking at the amount of income and wealth and expenses for the taxpayer's expenses (Bohari, 2010). Prof. WJ

de Langen in Bohari (2010) stated that every community should be subject to the same tax burden. The same burden here can be interpreted as a person who has a high income should be subject to a high tax burden and vice versa will be subject to a low tax burden if he had a low income and if his income was below the basic need, it was exempted from taxation.

1.5. The Concept of Presumptive Tax for MSME Taxation

Thuronyi (2003) stated that some tax systems in developed countries (the United States for example) did not use *presumptive taxation*. All taxpayers keep adequate records and report taxes on their actual income and expenses. The opposite condition occurs in countries that are usually included in the category of developing countries, in these countries most of the taxpayers are a group that is not easy to collect taxes or known as "*hard-to-tax*" so that tax collection will tend to use a *presumptive* system. This system requires taxpayers use presumptions in calculating the income tax. This system is also used when a business does not have sufficient competence in carrying out administration in its business operations. In general, usually in those countries the majority of taxpayers do not have financial transparency or clarity that allows for effective taxation (Engelschak, & Loepnick, 2009 in Ibrahim, 2016). Many developing and transition countries use this presumptive method, particularly in taxing small businesses and agriculture. This model or method often involves a flat rate of tax for small businesses, merchants, and even professionals (Thuronyi, 2003).

Yitzhaki (2007) in Suyani (2017) revealed that the model *presumptive* used in calculating the income tax was not using the actual tax base or not based on the amount that was taxed in general, but based on estimates based on size and other factors used to estimate the tax base amount.

The presumptive scheme could be implemented for many reasons. The reasons are as follows (Thuronyi, 1996).

1. Simplification, especially matters related to tax compliance and burden administration related to audit the taxpayer.
2. To prevent tax avoidance or tax evasion (which only works if the indicators in which the presumptive basis is more difficult to hide than the assumptions on which the accounting records are based)
3. When calculating tax amounts using a system based on normal accounts cannot be trusted due to inadequate taxpayer compliance, in terms of administration, tax calculation will be more convincing and credible if objective indicators are used in the tax assessment.
4. This estimation method is considered capable of moving taxpayers to keep the accounts used because if these accounts do not exist, they are subject to higher taxes. The point is that taxpayers are expected to keep the evidence or documents supporting the account so that they are not subject to a larger amount of tax.
5. The Presumptive exclusive type can be considered the most popular because of its incentive effect. In other words, the taxpayers who generate more income do not have to pay more taxes.
6. The presumption functioning as a minimum tax can be justified by a combination of problem reasons (income needs, equity) and political or technical difficulties in dealing with certain issues directly, such as opposing the calculation of tax through minimum taxation.

The application of presumptive tax is closely related to fields in which tax collection is not easy to do (*hard-to-tax sector*). This is rendered by unidentified actual incomes or transactions from these sectors, which could be used as the basis for tax imposition (DDTCNews, 2020). Musgrave (1981) in DDTCNews (2020) identified MSMEs, people with certain professions (whose income comes from various clients), and farmers as groups of *hard-to-tax sectors*. This opinion is also in line with the opinion of Federico J Herschel (1971) in Thuronyi (2004) who stated that the term *hard-to-tax* was usually used to refer to small farmers and small businesses (entrepreneurs).

According to Thuronyi (2004), the following factors contributed to making MSMEs sector *hard to tax*, namely:

1. the numbers were very large, making it impossible to intensively research more than a fraction of them;
2. an insufficient income;
3. the taxpayers were not compelled by business reasons to keep adequate books or financial statements;
4. the taxpayers sold most products at retail to get cash so that in order to collect tax on the income, a third party withholding application could not be used;
5. due to the causes above, the most dominant thing was that no supervision was in place, which causes the income from the business to be hidden easily.

1.6. Tax Avoidance

An attempt aimed to get a minimum tax paid by finding a gap where it is not regulated in detail in a rule is often defined as an attempt to tax avoidance (Darussalam, 2017). Most of experts claim that effort made in this way are lawful. That is because theoretically the provisions in an applicable rule are not violated, but the things violated are things done not in accordance with the aims and objectives of these provisions (Slamet, 2007).

The Asprey Committee of Australia in Slamet (2007), stated that tax avoidance in general was an act that according to the law still obeyed the law, so that it did not violate the rules because it was still considered a legal

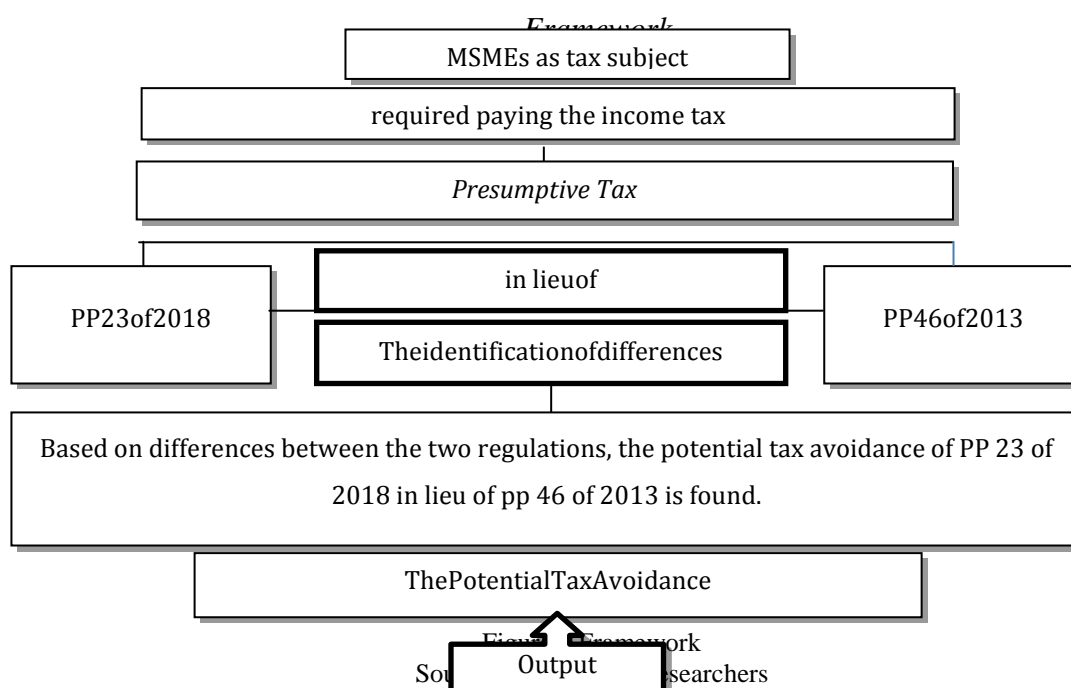
thing to do. However, the act that is carried out is an act that is contrary to the wishes desired by the party making the regulation.

Brown (2012) in Butarbutar (2017) stated that tax avoidance was an act of regulating an event that could be subject to lower taxes so as to get an advantage in the form of a smaller amount of tax in which this method was not expected to be carried out by the implemented rules.

According to DDTC (2007), the scheme of action in the form of tax avoidance, in various countries was generally grouped into two, namely *acceptable tax avoidance* and *unacceptable tax avoidance*. If an action taken does not have the purpose of avoiding paying taxes, it can be categorized as an acceptable group. Conversely, if a transaction has characteristics, namely it does not have a good business objective, such as a fictitious event that causes a loss, the transaction is included in the category of tax avoidance that is not acceptable (Rahayu, 2010).

However, the terms of a transaction can be categorized as an allowable transaction or not depending on the countries where the transaction occurs. Therefore, the same transaction may receive different treatment. An effort to avoid tax in a country is supposedly said to be an effort that is not permitted, whereas in other countries, that same effort is considered as an effort included in the category of effort that is permitted (Darussalam, 2007).

1.7. Framework



2. RESEARCH

This research uses the *framework* technique. The identification of steps to minimize the potential tax avoidance. This research uses documentation and interview methods. In documentation, researchers collected data and information through related literacy including books, taxation *Outcome* implementing regulations, journals and various other sources as a theoretical basis related to the issues discussed in this paper. In the interview, the researcher conducted interviews with several sources who have the authority or capacity and knowledge related to the issues discussed in this paper by asking a number of questions both orally and in writing.

3. RESULTS AND DISCUSSION

3.1. The Differences between PP 46 of 2013 and PP 23 of 2018

Based on data from the Central Statistics Agency, the number of MSME units in Indonesia in 2012 was 55,206,444 units with a constant price GDP contribution of IDR 4,321.8 trillion. However, that amount was not proportional to the contribution of MSMEs to tax revenue. The contribution of MSMEs in revenue is much smaller when compared to large businesses in Indonesia. Most of the tax revenue in Indonesia comes from the large business sector, which is approximately 75.6% (Sukaryo and Oktavia 2017).

Oftentimes the obstacle in taxing MSMEs is that the net income as the basis for taxation is not known clearly. The problem is caused by many MSMEs in Indonesia not carrying out administration or accounting of their business. To overcome this problem, most countries choose to implement a *presumptive* system rather than a standard system for taxing MSMEs (Darussalam, 2018). Yitzhaki (2007) in Suyani (2017) revealed that

presumptive tax is a method of imposing tax in which the tax calculation did not use an actual tax base, but an estimate based on certain parameters.

Since July 1, 2013, the Government began to enforce PP 46/2013. This regulation is an application of the scheme of presumptive tax. PP 46 of 2013 regulates that the amount of gross circulation is the parameter used in taxing MSMEs. The explicit purpose of this regulation is to provide a simple and easy form of tax collection for both taxpayers and tax collectors. Meanwhile, implicitly, according to Sulfan (Tax Supervisory Commission) this PP aimed for people who are currently engaged in informal economic activities to be able to move into the formal economy. The result of this government regulation is that data or public information that has never previously been entered into the tax information system will be entered into the database, so that the potential for taxes in the coming years will be easier to optimize the tax revenue.

Being valid for five years, PP 46 of 2013 was evaluated. Based on the results of the interview, according to Hadi Setiawan (Researcher, Fiscal Policy Agency), evaluation was a natural thing to do for a rule that had been long in effect. Evaluation was carried out to see how effective these provisions are, whether it could increase tax revenue, improve tax compliance, and so on.

The government finally issued PP 23/2018 which came into effect on July 1, 2018. When this PP 23/2018 came into effect, the government revoked and stated that PP 46/2013 was no longer valid. One of the most prominent changes between the two regulations is the final tax rate, which was changed from 1% to 0.5%. However, apart from the difference in tariffs, of course there are several other differences between PP 46 of 2013 and PP 23 of 2018. These differences will be further explained below.

3.1.1. Tax Subject Aspects

Viewed from the aspect of the tax subject, these two regulations have differences in corporate taxpayers. In the provisions of PP 46 of 2013, corporate tax subjects who are allowed to use final income tax are all forms of entity, except PE (permanent establishment). Meanwhile, not all corporate taxpayers could use the final income tax rate of 0.5% in the provisions of PP 23 of 2018. In Article 3 paragraph (1), corporate taxpayers who are allowed to use this final rate are taxpayers who are only cooperatives, CV, firms and Limited Liability Companies. According to Sulfan in PP 23 of 2018, other forms of entities as regulated in the Income Tax Law could not be imposed with the final income tax of PP 23 of 2018.

Certainly, there are impacts rendered by the difference in the form of restrictions on the corporate taxpayer. According to Sulfan, the implementation of PP 23/2018 was easier to supervise due to limited criteria for tax subjects, namely certain forms of entity. In addition, viewed from the perspective of corporate taxpayers subject to taxation who cannot use the final income tax rate in PP 23 of 2018, it is a matter of difference in imposition. The taxpayers previously subject to final income tax rates on gross circulation are subject to general rates calculated on the basis of actual taxes. However, this change in imposition does not necessarily increase the cost of compliance for taxpayers because basically the corporate taxpayer is deemed able to carry out accounting obligations.

3.1.2. Aspects of Tax Objects and Their Exemptions

The tax object of the two regulations is income from businesses that have a turnover of not more than IDR 4.8 billion. According to I Gd. Komang Bayu A (Widyaiswara Pajak), there was no difference in the aspect of the tax object between the two regulations. However, in PP 23 of 2018 a more detailed explanation was given about determining the gross turnover for individual taxpayers with the status of head of family, separation of assets, and choosing separately. The way to determine the gross turnover for individual taxpayers is based on the combined total gross turnover of the husband and wife. Meanwhile, those clauses are not confirmed in PP 46 of 2013.

Sulfan gave an opinion that in determining business income, according to PP 46 of 2013, it did not say whether income exempted as a tax object is also included in the calculation or not. Meanwhile, PP 23 of 2018 in Article 2 paragraph (3) more clearly and explicitly regulates that excluding income from business is income exempted from tax objects. According to Hanik Susilawati Muamarah (Permanent Lecturer of PKN STAN), the clarity in PP 23 of 2018 was expected to create no more differences of opinion between the tax authorities and taxpayers regarding the basis of tax imposition.

Thus, the provisions contained in PP 23 of 2018 regulating the determination of tax objects that can be subject to income tax at this final rate fulfill of the Four Maxims according to Adam Smith. Smith in Husen (2009) said that *four maxims* are the principle of legal certainty. In this case, taxpayers obtain clear legal certainty regarding the amount of tax borne by a clearer determination of the amount of gross turnover.

3.1.3. Tax Subject Exception Aspects

PP 46 of 2013 Article 2 paragraph (3) regulates the exemption of tax subjects, namely individual taxpayers who carry out trading and/or service business activities which in their business use facilities or infrastructure that can be dismantled, both residing and do not settle, and use part or all of the premises for public interest which are not designated as places of business or selling or are often known as street vendors. Whereas in PP 23 of 2018 this clause does not exist.

Thus, according to Sulfan, street vendors could be reached by being taxed at the final rate that was previously excluded. Although it could actually be interpreted that the income received or earned by the street vendors according to PP 46 of 2013 is subject to general rates. The same thought was also expressed by Hanik Susilawati. According to her, eliminating exemptions for taxpayers who use dismantled facilities was a good thing because the elimination of exceptions for street vendors would make it easier for the tax authorities to determine their criteria and to supervise them. Furthermore, it reflected the principle of *certainty* in which the implementation of tax collection on income earned by street vendors has clarity in the use of tax rates so that it can be determined the amount of tax owed certainly.

PP 23 of 2018 also regulates that a business entity in the form of a limited partnership or a firm established by several individuals having special expertise or its type of business is to provide services of the same type as independent work is included in the category of business entity that are not able to use the final rate as stipulated in this government regulation.

According to Hadi Setiawan, the statement above prevented tax avoidance by taxpayers who earn income from independent employment by forming a business entity. In addition, taxpayers who are not allowed using the final tax rate stipulated in PP 23 of 2018 is taxpayers who got tax holiday and tax allowance. This exemption also prevents the happening of multiple tax facilities.

4.1.4. Tax Administration Aspects for Transactions Withheld and/or Collected by Tax Withholders and/or Collectors

Minister of Finance Regulation Number 107/PMK.011/2013 on Procedures for Calculating, Depositing, and Reporting Income Tax on Income from Business Received or Obtained by Taxpayers with Circulation Certain Gross stipulates that taxpayers of PP 46 of 2013 who transact with cutters and/or collectors need a Notice of Tax Exemption so that they are exempt from withholding and/or collection of Income Tax. Based on Director General Regulation Number PER-2/PJ/2013 as the implementing regulation of PP 46 of 2013, Article 4 paragraph (2) regulates that Notice of Tax Exemption is submitted for each withholding and/or collection of Income Tax Article 21, Article 22, Article 22 imports, and/or Article 23. The Notice of Tax Exemption is valid until the end of the tax year concerned.

In Government Regulation Number 23 of 2018 and Minister of Finance Regulation Number PMK-99/PMK.03/2018 as implementing regulations stipulate that taxpayers who conduct transactions with cutters/collectors are required to have a Certificate that the taxpayer concerned is a PP 23 year 2018 taxpayer so that the taxpayer will be cut income tax of 0.5% through withholding mechanism. The certificate is only filed once by the taxpayer and is valid until the taxpayer does not meet the criteria for PP 23 of 2018 or chooses to be charged with the general rate of Income Tax Law Article 17.

Based on Director General Regulation Number PER-32/PJ/2013, cutters and/or collectors do not deduct and/or collection if you have received a photocopy of Notice of Tax Exemption that has been legalized by the Tax Service Office. Furthermore, the regulation requires taxpayers who submit a request for legalization of a photocopy of the Notice of Tax Exemption to make deposits for every transaction that will be carried out with cutters and/or collectors. Whereas in PMK-99/PMK.03/2018, taxpayers only submit photocopies of certificates to cutters and/or collectors without legalization and do not require any prior deposits.

Based on the differences above, according to Sulfan, from the side of administrative expenses, the burden of the application of PP 46 of 2013 that must be incurred by both the Directorate General of Taxes (DGT) and taxpayers was greater than PP 23 of 2018. The reason is that taxpayers are required to apply for Notice of Tax Exemption for each transaction with cutters and/or collectors. On the other hand, in PP 23 of 2018, a Certificate is only made once.

Thus, PP 23 of 2018 is in accordance with theory *The Four Maxims* by Adam Smith (1723-1790), namely *economic*. This principle requires that the cost of collecting and fulfilling tax obligations for taxpayers is expected to be carried out efficiently, as well as the burden borne by the taxpayer.

In terms of tax revenue, PP 46 of 2013 regulates exemption from withholding and/or collection of transactions with taxpayers of PP 46 of 2013 so that the tax liability on this matter becomes the obligation for taxpayers to pay 1% final income tax themselves. Whereas in PP 23 of 2018, taxpayers are still subject to withholding and/or collection at a rate of 0.5% on condition that there is a Certificate. Through withholding and/or collection mechanism, tax revenue will more definitely go to the state treasury.

The statement above is also in line with the opinion of I Gd. Komang Bayu A. He stated that the taxpayers who are the target of implementing PP 23/2018 were generally MSMEs, so that the characteristics and level of compliance tended to be low. Therefore, the mechanism becomes appropriate when using a withholding mechanism. In terms of convenience, according to Hanik Susilawati Muamarah, PP 23 of 2018 provides more convenience for taxpayers because taxpayers only need to show a certificate. This is different from PP 46 of 2013 which requires taxpayers to make deposits in advance for transactions with these cutters and/or collectors.

4.1.5. Final Income Tax Is Mandatory or Optional

In PP 46 of 2013, it is determined that if the taxpayer's gross turnover does not exceed IDR 4.8 billion in a tax year, the taxpayer is subject to final Income Tax of 1%. Therefore, PP 46 of 2013 is mandatory. This

regulation requires taxpayers with a turnover of less than IDR 4.8 billion to use the final rate in calculating taxes on their business. Meanwhile, PP 23 of 2018 is *optional*, which provides options for taxpayers who is able to do accounting to be taxed at the final rate of PP 23 of 2018 or the general rate of Article 17 of the Income Tax Law for their business. According to Hadi Setiawan, based on the explanation of Article 7 PP 23 of 2018, the right to choose in PP 23 of 2018 has the intention that if the taxpayer chooses to use the general rate, for the following year the taxpayer can only use the general rate and cannot return to the PP 23 of 2018.

This option makes taxpayers can choose to use the final rate or general rate. According to Sulfan, taxpayers who could do accounting would consider a more efficient tax burden. The word efficient does not necessarily mean that less taxes are paid. It can be the Income Tax paid at the final rate of PP 23 of 2018 is smaller than the general rate, but on the other hand, if you are going to make transactions with cutters and/or collectors, you have to arrange a Certificate, which is not necessarily considered efficient. Therefore, it becomes natural if taxpayers who have been able to do bookkeeping will compare the final rate or general rate mechanism to sort out the most efficient and profitable mechanism for the taxpayer.

4.1.6. Aspects of Justice

Based on the results of the interview, Sulfan revealed that talking about the aspect of justice in the imposition of final income tax was ambiguous. There are some taxpayers who say that they are fair because paying final income tax is smaller than the general income tax rate and there are also those who say that it is unfair because paying the final income tax is greater than the general income tax rate or they should not even pay taxes because of a loss, but as they use final tax, they have to pay taxes. For this reason, the researchers compared PP 23 of 2018 with PP 46 of 2013 to find out which one more accommodates the aspect of justice between the two regulations.

The provisions in PP 46/2013 stipulate that the imposition of tax at this final rate is mandatory. Therefore, the final income tax according to PP 46 of 2013 does not consider taxpayers experiencing losses or experiencing gains. Based on this rule, individual or corporate taxpayers who experience losses will continue to pay taxes because the basis for taxation is gross turnover not based on net income.

According to Sulfan, Income Tax which is final in PP 46 of 2013 did not pay attention to whether the taxpayer earned income or not. This is contrary to Article 4 paragraph (1) of the Income Tax Law which states that the object of tax is income, that is, any additional economic capacity. Whereas in PP 46 of 2013 stipulates that taxpayers who experience losses will still pay Income Tax, even though if the taxpayers experience losses, there is no additional economic capacity. SHS *Concept* formulates that income is calculated from consumption plus changes in the value of wealth at the beginning and end of the period (Gunadi, 2013). If there is a loss, it means that automatically no income is obtained because there is no income that is used for consumption or that is stored as wealth.

Sulfan provided an illustration related to the imposition of Income Tax with PP 46 of 2013 for private entrepreneurs. In the imposition of individual Income Tax, there is a term *Non-Taxable Income* or income limit that is not taxable. Suppose that the *Non-Taxable Income* status is married with two dependents or Rp.67,500,000.00. If the profit margin of the business is 10%, it means that the turnover in a year is IDR 675,000,000.00. Thus, the individual will be subject to income tax after the turnover is more than Rp.675,000,000.00. However, PP 46 of 2013 will still impose Income Tax on taxpayers regardless of their turnover. If it is simulated with the highest *Non-Taxable Income* limit, namely, married with 3 dependents, Rp. 126,000,000.00, it can be concluded that PP 46 of 2013 is very profitable for taxpayers whose turnover is more than Rp1 billion to Rp4.8 billion. On the other hand, taxpayers whose turnover is below Rp1 billion are even disadvantaged by this arrangement.

The Theory of Carrying Power, put forward by Prof. WJ de Langen in Bohari (2010) stated that every community should be subject to the same tax burden. The same burden could be interpreted as people who have high income are subject to a high tax burden and vice versa, taxpayers are subject to a low tax burden if the taxpayer has low income and if the income is below the basic need, the taxpayer is exempt from taxation. Based on the previous illustration that taxpayers who have a higher income (more than IDR1 billion to IDR4.8 billion) will benefit more, this case shows that PP 46 of 2013 does not reflect justice because it is not in accordance with the taxpayer's carrying capacity.

PP 23 of 2018 is optionally giving options to taxpayers who have been able to make bookkeeping to use the general rate of Article 17 of the Income Tax Law. Therefore, if the taxpayer gets a profit, the taxpayer pays Income Tax according to the rate of Article 17 on the profit, whereas if the taxpayer is experiencing a loss, the taxpayer is not obliged to pay the income tax. Individual taxpayers who have a net income less than non-taxable income are also not obliged to pay taxes. However, taxpayers who are not or unable to make bookkeeping will be subject to the final rates of PP 23 of 2018 so that the possibility of what will happen is that individual taxpayers who experience a loss continue to pay taxes as stipulated in PP 46 of 2013.

According to Sulfan, this PP 23 of 2018 combined simplicity and convenience, and accommodated justice for taxpayers who are able to carry out bookkeeping. This is in line with Hanik's opinion which revealed that PP 23/2018 was fairer than PP 46 of 2013, because it provided an option for taxpayers to use the rate according to

the the Income Tax Law which accommodates Non-Taxable Income. Meanwhile, in the provisions of PP 46/2013, taxpayers are not given the opportunity to use the provisions of Article 17 of the Income Tax Law. The same opinion was also expressed by Komang, according to him, PP 23/2018 more accommodated aspects of justice. Even though the justice aspect of PP 23 of 2018 is not fully fulfilled because the Income Tax with the final rate is imposed on the gross turnover so it is likely that an individual or corporate taxpayer experiencing losses will still pay taxes as stipulated in PP 46 of 2013.

According to Sulfan, the purpose of imposition of final taxes was not for the purpose of justice, but for the simplicity of taxpayers in fulfilling their tax obligations in terms of calculation, deposit and reporting. Furthermore, the imposition of final tax is also caused by the difficulty of the tax authorities in collecting taxes on the taxpayer. Thus, both PP 23 of 2018 and PP 46 of 2013 actually do not fulfill the aspect of justice as a whole. However, PP 23 of 2018 combines simplicity and convenience, and accommodates justice for those who are able to do bookkeeping. Furthermore, it can be concluded that PP 23 of 2018 is fairer than PP 46 of 2013.

4.1.7. The Clause of One Year of Commercial Operation for Corporate Taxpayers

PP 46 of 2013 stipulates that corporate taxpayers can use the final rate based on these provisions when the taxpayer is already operating the business for one commercial year. This is implicitly stated in Article 2 paragraph (4) regarding exempted corporate taxpayers. The meaning when operating commercially is contained in the Circular Letter of Director General of Taxes Number SE-32/PJ/2014 as an affirmation of the implementation of PP 46 of 2013, namely:

A determination when operating commercially as referred to in PP 46 of 2013 for corporate taxpayers is when the taxpayer conducts commercial operations for the first time for a taxpayer that operates in the:sector

- 1) services, is the first time a service is sold and/or when income/income is received or earned; and/or
- 2) trade and industry, is the first time a sale of goods is made and/or when income is received or earned.

The illustration of operating commercially is as follows.

Corporate taxpayers conducting trading business sales of products for the first time on July 1, 2013, this business entity keeps books with the same financial year as the calendar year. Since having made a sale on July 1, 2013, at that time the corporate taxpayer is deemed to have started commercial operations. In that year the provisions of PP 46 of 2013 apply. Because they have only started commercial operations, in the 2013 tax year and 2014 tax year the taxpayer is subject to Income Tax at the general rate (a period of one year from commercial operation 1 July 2013 to 30 June 2014 and continued until December 31, 2014). Furthermore, taxpayers can only use PP 46 of 2013 in 2015 if in 2014 the turnover of the business is less than or equal to IDR 4.8 billion.

So it can be concluded that corporate taxpayers can use the final rate of PP 46 of 2013 if it has been operating for one year commercially which may go through two tax years as in the illustration above: tax year 2013 and tax year 2014. Meanwhile, in PP 23 of 2018 the "one year after commercial operation" clause does not exist. Hadi said that new taxpayers can directly enjoy the facilities or use the final rates of PP 23/2018. Komang also expressed the same thing, namely that a newly established agency could apply a tariff of 0.5%.

On the other hand, there are contradictory views regarding this clause. According to Sulfan, new corporate or individual taxpayers could not immediately use PP 23 of 2018, because Article 4 paragraph (1) regulates the determination of the gross amount, namely "the amount of gross turnover in 1 (one) year from the last Tax Year before the Tax Year concerned." So that in order to be subject to the final rates of PP 23 of 2018, taxpayers must wait until the beginning of the next tax year after the tax year begins to become a new taxpayer until the end of the tax year concerned, it is known the amount of gross turnover. For example, taxpayers began commercial operations on July 1, 2019 and during 2019 the circulation was less than IDR 4.8 billion so that in the 2020 tax year taxpayers could use PP 23 of 2018. The reason is that July to December 2019 are part of the 2019 tax year and the circulation is still less than or equal to IDR 4.8 billion.

However, if we use PP 46 of 2013, the calculation of one year is the full one year (12 months) since commercial operation. For example, taxpayers are registered and operating from 1 July 2019, this means that one commercial year is 1 July 2019 to 30 June 2020. If using PP 46 of 2013, taxpayers can start using the final rate in Fiscal Year 2021 if the business cycle is Januaryas of December 2020 not more than IDR 4.8 billion. This opinion is in line with Kunwi's opinion that new corporate or individual taxpayers cannot use PP 23 of 2018.

Based on the explanation of Article 5 of PP 23 of 2018 an example of a limited company registered as taxpayer in 2019 is presented. Therefore, since 2019 the limited company is subject to PP 23/2018 rates. This shows that since the first year new taxpayers can directly use the final rate. However, according to Sulfan the example in that explanation is not correct. The reason is based on the opinion of legal experts, if the explanation contradicts the body of a law, the legal basis still refers to the body and explanations will be ignored.

According to Hanik, in general in PP 23 of 2018, the tax calculation was based on the previous tax year. Elucidation to Article 5 also regulates taxpayers who are registered after 1 July 2018, namely the use of the final

rate calculated from the tax year. For example, taxpayers are registered July 2, 2018, so that starting August 2018, taxpayers are required to pay tax at a rate of 0.5%, unless the taxpayer chooses to use Article 17 of the Income Tax Law. This is regulated in Article 5 paragraph (2) of PP 23 of 2018.

4.1.8. Duration of Imposition

A significant difference between these two regulations, apart from the difference in rates, is that there is a period for the imposition of Income Tax at the final rate. In PP 23 of 2018 Article 5 paragraph (1) regulates the period for imposition of final Income Tax in which previously it was not regulated in PP 46 of 2013. Article 5 paragraph (1) of PP 23 of 2018 reads:

Specific period of tax imposition Final income as referred to in Article 2 paragraph (1), which is no longer than:

- a. 7 (seven) Tax Years for individual Taxpayers;
- b. 4 (four) Tax Years for corporate Taxpayers in the form of cooperatives, limited partnership, or firms; and
- c. 3 (three) Tax Years for corporate Taxpayers in the form of limited liability companies.

According to Sulfan, the implementation period stipulated in PP 23 of 2018 aimed to provide opportunities for taxpayers to immediately be able to book or at least record the business so that the imposition of taxes did not go through the imposition of final income tax. Furthermore, Hanik stated that with the implementation of this period, taxpayers could become taxpayers who are orderly on bookkeeping, so that their taxes can be calculated using general provisions.

The time limit given in the provisions of PP 23 of 2018, according to Komang, was sufficient to give every taxpayer the opportunity to prepare or adjust their tax administration. Nevertheless, with the opportunity to prepare tax administration in accordance with the provisions in the Taxation General Provisions Law, DGT also has the opportunity to carry out good law enforcement on tax obligations that have been carried out by taxpayers.

4.2. The Potential for Tax Avoidance in PP 23 of 2018 as a lieu of PP 46 of 2013

The imposition of final income tax is based on the need for encouragement in the context of investment development and public savings, simplicity in tax collection, reduced administrative burdens for both taxpayers and DGT, and paying attention to economic and monetary development. According to Sulfan, this Final Income Tax should be imposed on passive income, not on active income. The reason is that if the final income tax is imposed on active income, what will happen is an injustice in imposing taxes on taxpayers.

Sulfan also revealed that both PP 46 of 2013 and PP 23 of 2018 aim that taxpayers, primarily informal sector MSMEs with turnover of less than IDR 4.8 billion, participate in paying taxes with their own awareness (self-compliance) without coercion from officers. Indonesia adopts a self-assessment system in its tax collection. PP 23 of 2018 and PP 46 of 2013 also give full confidence to the taxpayer community to calculate, deposit and report their taxes. DGT cannot conduct research on the correctness of a taxpayer's report if DGT does not have comparative data from third parties related to the taxpayer. As it is known that MSMEs are informal sector business actors that have not been registered with the permits of the regional or central government, so it is unlikely that there will be comparable data from third parties. Therefore, the potential for informal sector activities to avoid taxes is enormous. This causes the informal sector to dominate the Indonesian economy, but has a small contribution to paying taxes.

PP 23 of 2018 which was implemented as a substitute for PP 46 of 2013 has several differences which have been described above. Based on the interviews that have been done by several speakers and researchers, among the differences in the provisions of these regulations there are the potential for tax avoidance or evasion of taxes conducted by the taxpayer.

Judging from the aspect of the tax object, PP 23 of 2018 is more clear and firm in determining the amount of gross turnover than PP 46 of 2013. However, according to Hanik, although there is clarity regarding the limitations of tax objects that are included in certain gross income, there is the possibility of taxpayers doing shifting on income that is not included in the group are subject to PP 23 of 2018.

Hanik illustrate *shifting* by taking the example of individual taxpayers who have business building stores and casual work as an architect. In the 2020 tax year, the individual taxpayer receives a gross turnover of architectural services in his own name of Rp.3,000,000,000.00 (three billion rupiah), and from the building shop business the taxpayer receives a gross turnover of Rp.4,000,000,000.00 (four billion rupiah) in one tax year.

Although the gross income of the individual taxpayer is IDR 7,000,000,000.00 (seven billion rupiah), the determination of the gross circulation limit is only based on the gross turnover of the building shop business. Because the gross circulation limit received by individual taxpayers from the building shop business does not exceed IDR 4.8 billion, the income from the building shop business is subject to final Income Tax based on the provisions of PP 23 of 2018. Meanwhile, income from architectural services is subject to Income Tax based on Tariff Article 17 paragraph (1) letter a of Income Tax Law.

However, the existence of two sources of income, namely one is the object of the PP 23 year 2018 tax and the other is not the object of the PP 23 year 2018 tax, creates an opportunity for the taxpayer to do *shifting* or

split of the business. For example, if the gross turnover of an individual taxpayer's building shop has exceeded IDR 4.8 billion, there is a possibility that the gross turnover of the building shop is recognized as an architect's gross circulation so that an individual taxpayer can use a final rate of 0.5% or whichever rate resulting lower taxes payable and being more profitable for taxpayers.

This is one of the tax avoidance efforts. Tax avoidance is often interpreted as an effort made to get the minimum tax paid by finding a gap in which the matter is not regulated in detail in a regulation (Darussalam, 2017). Most of the experts claim that efforts made in this way are lawful because the theoretical provisions in an applicable rule are not violated, but the thing violated is the intent and purpose of these provisions (Slamet, 2007).

The illustration above is included in unacceptable tax avoidance. Tax avoidance can be classified as unacceptable tax avoidance if it has characteristics such as not having good business objectives, solely to avoid taxes, and transactions that are engineered to cause costs or losses (Rahayu, 2010). The breakdown of gross circulation carried out includes transactions that are engineered because the gross circulation is not supposed to be included in the income subject to PP 23 of 2018. Such income should be subject to Article 17 of the Income Tax Law because it has exceeded IDR 4.8 billion.

The next difference is the one year commercial operation clause for corporate taxpayers. The absence of this clause in PP 23 of 2018 means that new corporate taxpayers can immediately use the final rate according to several sources previously described. This can also be used by corporate taxpayers to shift gross turnover.

For instance, if the circulation of corporate taxpayers has approached Rp.4.8 billion, there is a possibility that the corporate taxpayer will establish a new entity so that the taxpayer's gross turnover is recognized as gross turnover of the new corporate taxpayer. The reason is no prohibition against establishing more than one business entity in the provisions for establishing a business entity. Thus, the taxpayer is not subject to Income Tax with the tax rate of Article 17 of the Income Tax Law, but is still subject to PP 23 of 2018.

Regarding the difference in the time period for imposition of the final PP 23 tariff of 2018 which is not regulated in PP 46 of 2013, Hadi explained that the period could be used in particular by corporate taxpayers to do tax avoidance by forming or establishing a new entity with the same owner. Suppose an entity in calculating its Income Tax uses the final rate in PP 23 of 2018 and wants to keep using the final rate. When the final rate imposition period has ended, there is a potential for the corporate taxpayer to establish a new business entity. The gross circulation can be split into two or more business entities so that the taxpayer can use the final rate.

There are two possible scenarios for corporate taxpayers in this case. Firstly, the taxpayer applies for the elimination of Taxpayer Identification Number and establishes a new entity. According to Kunwi, to minimize the taxpayer hit-and-run scheme like the first scenario, continuous supervision is needed. One of the controls that can be done is to use a post audit after elimination of Taxpayer Identification Number. Secondly, the corporate taxpayer does not apply for Taxpayer Identification Number elimination, but immediately establishes a new entity. Kunwi said that this could be minimized by optimizing the role of *Account Representative* (AR) to supervise the taxpayer through profiling to the director or shareholders as a whole.

According to Hadi, tax avoidance carried out by continuously establishing new entities is also not good for taxpayers because changes in business entities continuously will affect the name or brand of the taxpayer. Of course this is a decision creating *trade-offs* for taxpayers. Taxpayers need to choose either losing a well-known brand or paying small taxes but with a name or brand that starts from scratch. This opinion is in line with Sulfan's opinion that taxpayers also need to consider the costs and benefits of that tax avoidance.

Considering the potential tax avoidance above, Directorate General of Taxes need to concern efforts that can certainly minimize the problem. According to Kunwi, the government has also taken preventive measures by imposing limits on users of PP 23 of 2018, namely taxpayers who have chosen to use general Income Tax rates are not allowed to use PP 23 of 2018. Furthermore, according to Komang, a good communication about the importance of the role of taxes and persuasively motivating taxpayers to be more aware to carry out tax obligations properly are also things that need to be done to prevent tax avoidance.

Another effort that can be done is to evaluate the implementation of PP 23 of 2018. Hadi stated that if in fact many taxpayers are taking advantage of the gaps in PP 23 of 2018 to carry out tax avoidance after five years of PP 23 of 2018 apply and are evaluated, PP 23 of 2018 can be changed by including a clause, that is, corporate taxpayers who have the same owner name or have a special relationship with individual taxpayers who have previously utilized PP 23 of 2018 cannot reuse the facility in PP 23 of 2018.

5. CONCLUSION

Based on explanations that have been explained in the previous chapters it can be concluded that the differences between PP 46 2013 and PP 23 of 2018 are as follows.

- a. Viewed from the tax subject aspect, corporate tax subjects regulated in PP 46 of 2013 are all forms of entity except Permanent Establishment. Whereas in PP 23 of 2018, corporate taxpayers who are allowed to use this final rate are only corporate taxpayers in the form of cooperatives, CVs, firms and limited company.

- b. The tax object of the two regulations is income derived from businesses, which have a turnover of not more than 4.8 billion rupiah. However, in PP 23 of 2018 there is a more detailed explanation regarding the determination of gross turnover for corporate taxpayers and individual taxpayers, while in PP 46 of 2013 such detail is not explained.
- c. Regarding tax subject exemptions, PP 46/2013 stipulates that individual taxpayers who carry out trading and/or service business activities, which in their business use facilities or infrastructure that can be dismantled, both resident and non-permanent; and use part or all of the premises for public interest which are not designated as places of business or selling or often known as street vendors. Whereas in PP 23 of 2018 this clause does not exist. In PP 23 of 2018 there is also an exception for taxpayers who have obtained facilities in the form of a tax holiday and tax allowance. It aims to avoid the provision of multiple facilities.
- d. Regarding tax administration aspects for transactions withheld and/or collected by tax cutters and/or collectors, PP 46 of 2013 regulates the existence of a Certificate of Exemption to make taxpayers be exempted from withholding mechanism. Meanwhile, PP 23 of 2018 regulates a Certificate so that taxpayers will be deducted and/or collected at a half percent rate when taxpayers transact with withholder dan/or collector.
- e. PP 46/2013 stipulates that if the taxpayer's gross turnover does not exceed IDR 4.8 billion in one tax year, the taxpayer is subject to final income tax of one percent. Therefore, PP 46 of 2013 is mandatory. This regulation requires taxpayers with a turnover of less than 4.8 billion to use the final rate in imposing taxes on their business. Meanwhile, PP 23 of 2018 is optional, which provides options for taxpayers who is able to do bookkeeping to be taxed with the final rate of PP 23 of 2018 or the general rate of Article 17 of the Income Tax Law.
- f. PP 23 of 2018 combines simplicity and convenience, and accommodates justice for those who are able to carry out bookkeeping so that PP 23 of 2018 is considered fairer than PP 46 of 2013. Although the justice aspect of PP 23 of 2018 is not fully fulfilled because Income Tax with a final rate is imposed from the amount of gross turnover so that there is still a possibility that the taxpayer experiencing a permanent loss will be taxed.
- g. Corporate taxpayers can use the final tariff of PP 46 of 2013 if they have been operating for one year commercially. Meanwhile, in PP 23 of 2018 the clause "one year after commercial operation" does not exist. Therefore, new taxpayers can directly enjoy the facilities or use the final rates of PP 23 of 2018.
- h. PP 23 of 2018 Article 5 paragraph (1) regulates the period for imposition of final Income Tax in which previously it was not regulated in PP 46 of 2013.

Between the differences in the provisions of the two regulations, there is a possibility that *tax avoidance* is carried out by the taxpayers. Judging from the differences related to aspects of tax objects and their exemptions, there is still the possibility of taxpayers *shifting* their income so that they are not included in the group subject to PP 23 of 2018 even though there is a clarity regarding the limitations of tax objects included in certain gross income in PP 23 of 2018.

The next difference is the one year commercial operation clause for corporate taxpayers. The absence of this clause in PP 23 of 2018 will cause the new corporate taxpayer to immediately use the final rate. Such loophole can stimulate corporate taxpayers to do *shifting*. If the circulation of corporate taxpayers has approached IDR 4.8 billion rupiah, the corporate taxpayer can establish a new entity so that the taxpayer's gross revenue is recognized as gross circulation of the new corporate taxpayer because in the provisions for establishing a business entity, there is no prohibition to establish more than one business entity. Breaking or *shifting* of gross circulation carried out includes transactions that are engineered because the gross turnover should not enter into the gross circulation imposed by PP 23 of 2018 so that it is included in *unacceptable tax avoidance*.

Furthermore, PP 23 of 2018 regulates the difference in the time period for imposition of the final income tax tariffs of 2018, while such period is not regulated in PP 46 of 2013. It can lead corporate taxpayers to establish a new entity especially for taxpayers who have expired the period of imposition of final income tax rates, but still want to use the final income tax rate.

Considering the potential tax avoidance above, Directorate General of Taxes need to concern efforts that can certainly solve the problem through an effective communication or another activities that can motivate taxpayers to be more aware in fulfilling their tax obligations properly. Another effort that can be done is to evaluate the implementation of PP 23 of 2018. If many taxpayers take advantage of the loopholes in PP 23 of 2018 to carry out tax avoidance, PP 23 of 2018 could be changed by including a clause, that is, corporate taxpayers who have the same owner name or have a special relationship with individual taxpayers who have previously utilized PP 23 of 2018 cannot reuse such facility in PP 23 of 2018.

References

- Ayza, Bustamar. 2017. *Hukum Pajak Indonesia*. Jakarta: Kencana.
- Badan Pusat Statistik. 2016. *Tabel Perkembangan UMKM pada Periode 1997 -2013*. 22 Desember. <https://www.bps.go.id/statistictable/2014/01/30/1322/tabel-perkembangan-umkm-pada-periode-1997--2013.html> diakses pada 1 April 2020.
- Bird, R.M. , dan S Wallace. 2005. "Is it Really so Hard to Tax the Hard-to-Tax? The Context and Role of Presumptive Taxes." Dalam *Taxing the Hard-to-tax: Lessons from Theory and Practice (Contributions to Economic Analysis, Vol. 268)*, oleh J.R., Martinez-Vazquez, J. and Wallace, S. (Ed.) Alm, 121-158. Bingley: Emerald Group Publishing Limited.
- Bohari. 2010. *Pengantar Hukum Pajak Edisi Revisi 8*. Jakarta: PT. Raja Grafindo Persada.
- Butarbutar, Russe. 2017. *Hukum Pajak Indonesia dan Internasional (P3B/Tax Treaty, Transfer Pricing, Tax Avoidance, Tax Evasion, Tax Amnesty)*. Bekasi: Gramata Publishing.
- Darussalam dan Danny Septriadi. 2007. "Beda Negara Beda Pandangan dalam hal Tax Avoidance." *Inside Tax Edisi Perkenalan September 2007, 12-14*. <https://ddtc.co.id/id/riset/publikasi/majalah-insidetax/tax-planning-aggressive-tax-planning>
- Darussalam. 2019. *Konsep Penghasilan dalam Konteks Pajak*. https://news.ddtc.co.id/konsep-penghasilan-dalam-konteks-pajak-18208?page_y=40
- Darussalam, dan Danny Septriadi. 2017. *Perjanjian Penghindaran Pajak Berganda: Panduan, Interpretasi, dan Aplikasi*. DDTC.
- Darwanto, Darwanto, Utami Tri, dan Dani Danuar. 2013. "Pengembangan Usaha Mikro Kecil dan Menengah (UMKM) Berbasis Ekonomi Kreatif di Kota Semarang." *Diponegoro Journal of Economics* 2.4.
- DDTC. 2007. "Tax Planning, Aggressive Tax Planning, Tax Avoidance, Tax Evasion dan Anti Tax Avoidance." *Majalah Insidetax*. <https://ddtc.co.id/id/riset/publikasi/majalah-insidetax/tax-planning-aggressive-tax-planning-tax-avoidance-tax>
- DDTCNews. 2020. *Presumptive Tax Sering Dikaitkan dengan Sektor yang Sulit Dipajaki*. https://news.ddtc.co.id/presumptive-tax-sering-dikaitkan-dengan-sektor-yang-sulit-dipajaki-20355?page_y=762.5
- Fauziah, Ulfah, dan Bernard E. Tidajoh. 2018. "Perencanaan Pajak Untuk Usaha Mikro, Kecil, Dan Menengah." *Substansi* 2.2 200-214.
- Gunadi. 2013. *Panduan Komprehensif Pajak Penghasilan*. Jakarta: Bee Media.
- Gunartin. 2017. "Penguatan Umkm Sebagai Pilar Membangun Ekonomi Bangsa." *Jurnal Pendidikan, Hukum dan Bisnis Vol.1 No. V Desember 2017*.
- Hasanah, Uswatun. 2018. "ANALISIS PERBANDINGAN PP 46 TAHUN 2013 DAN PP 23 TAHUN 2018 PADA UMKM." *JURNAL MANAJEMEN DAN BISNIS* 6.2 16-27.
- Husen, La Ode. 2009. *Hukum Pajak dan Hak Privilege*. Bandung: CV Utomo.
- Ibrahim, Syarif. 2013. "Penaan PPh Final Untuk Wajib Pajak Dengan Peredaran Bruto Tertentu, Sebuah Konsep Kesederhanaan Penaan Pph Untuk Meningkatkan Voluntary Tax Compliance." *Pusat Kebijakan Pendapatan Negara-Badan Kebijakan Fiskal*. http://www.kemenkeu.go.id/sites/default/files/Kajian%20PPH%20Final%20UMKM_PKPN.pdf
- Kesuma, Agus Iwan. 2010. "Perencanaan Pajak." *Jurnal Akuntabel. Fakultas Ekonomi Universitas Mulawarman*.
- Laoli, Noverius. 2019. *Pasca Tarif Pajak UMKM Turun Jadi 0,5% Jumlah Wajib Pajak Meningkat*. 10 Januari. <https://nasional.kontan.co.id/news/pasca-tarif-pajak-umkm-turun-jadi-05-jumlah-wajib-pajak-meningkat>
- Lestari, F. F. 2016. "PENGARUH EKSTENSIFIKASI PAJAK DAN TINGKAT KEPATUHAN WAJIB PAJAK ORANG PRIBADI TERHADAP TINGKAT PENERIMAAN PAJAK PENGHASILAN (Studi Kasus pada Kantor Pelayanan Pajak Pratama Sumedang)." (Doctoral dissertation, Universitas Widyatama).
- Lestningsih, A. S. 2014. "Penerapan PP. 46 Tahun 2013 Dalam Laporan Rekonsiliasi Fiskal Sebagai Dasar Untuk Menghitung PPh Badan Pasal 29 Terutang." *Moneter-Jurnal Akuntansi dan Keuangan*, 1(2).
- Majalah Pajak. 2019. *Menggalai Kontribusi Sektor UMKM*. 26 Juli. <https://majalahpajak.net/menggalai-kontribusi-sektor-umkm/>.
- MAULANA, N. 2015. "PENGARUH PENCAIRAN TUNGGAKAN PAJAK TERHADAP PENERIMAAN PAJAK PENGHASILAN ORANG PRIBADI PADA KPP PRATAMA PALEMBANG ILIR BARAT." (Doctoral dissertation, Politeknik Negeri Sriwijaya).
- Melville, Alan. 2009. *Taxation: Finance Act 2009 Fifteenth edition published 2010*. Financial Times.
- Munawir, S. 2003. *Pajak Penghasilan, Edisi Pertama*. Yogyakarta: Badan Penerbitan Fakultas Ekonomi.
- Pramukti, Angger Sigit, dan Fuady Primaharsya. 2015. *Pokok-Pokok Hukum Perpajakan*. Yogyakarta: Medpress Digital.
- Pudyatmoko, Y, Sri. 2009. *Pengantar Hukum Perpajakan*. Yogyakarta: CV. Andi Offset.

- PUTRI, VICTORIA PASARI. 2018. *ANALISIS HUKUM PAJAK TERHADAP PAJAK PENGHASILAN ATAS USAHA JASA KONSTRUKSI*.
- Rahayu, Ning. 2010. "Evaluasi Regulasi Atas Praktik Penghindaran Pajak Penanaman Modal Asing." *Jurnal Akuntansi dan Keuangan Indonesia Volume 7 - No. 1*.
- Sindari, Dianaswara, dan Arnati Arniati. 2014. "Analisis Perbandingan Penerapan PP no 46 tahun 2013 dengan UU no 36 tahun 2008 pada PT Trio Infotek Batam." *JURNAL AKUNTANSI, EKONOMI dan MANAJEMEN BISNIS/ e-ISSN: 2548-9836 2.2 154-172*.
- Slamet, Indrayagus. 2007. "Tax Planning, Tax Avoidance, dan Tax Evasion di Mata Perpajakan Indonesia." *Majalah Insidetax Edisi Perkenalan*. <https://ddtc.co.id/id/riset/publikasi/majalah-insidetax/tax-planning-aggressive-tax-planning-tax-avoidance-tax-evasion-dan-anti-tax-a>.
- Sukaryo, dan Oktavia Oktavia. 2017. "Analisis Penerapan Peraturan Pemerintah Nomor 46 Tahun 2013 terhadap Beban Pajak Wajib Pajak Orang Pribadi UMKM di Indonesia dengan Menggunakan Skema Gain/Loss." *Jurnal Keuangan dan Perbankan 12.2 128-144*.
- Suryani, Wahyu, Maslichah Maslichah, dan Junaidi Junaidi. 2019. "PENGARUH PENGALIHAN PP 46 2013 MENJADI PP 23 2018 TERHADAP TINGKAT PERTUMBUHAN WAJIB PAJAK UMKM DAN PENERIMAAN PPH PASAL 4 AYAT (2) DI KPP PRATAMA PASURUAN." *Jurnal Ilmiah Riset Akuntansi 8.02*.
- Suyani, Emik. 2017. "Analisis Skema Presumptive untuk Penghitungan Pajak Penghasilan Wajib Pajak UMKM di Indonesia." *Jurnal Info Artha 1.2 139-149*.
- Thuronyi, V. 2003. *Comparative Tax Law, Kluwer Tax International*.
- Thuronyi, V. 2005. "Presumptive Taxation of the Hard-to-tax." Dalam *Taxing the Hard-to-tax: Lessons from Theory and Practice (Contributions to Economic Analysis, Vol. 268)*, oleh J.R., Martinez-Vazquez, J. and Wallace, S. (Ed.) Alm, 101-120. Bingley: Emerald Group Publishing Limited.
- . 1996. *Tax Law Design and Drafting volume 1*. USA: International Monetary Fund.
- Tiley, John. 2004. *Studies in the History of Tax Law Volume 1*. North America (US and Canada).
- Waluyo. 2017. *Perpajakan Indonesia Edisi 12*. Jakarta selatan: Salemba Empat.
- . 2010. *Perpajakan Indonesia Edisi 9*. Jakarta selatan: Salemba Empat.
- Badan Pusat Statistik. Analisis Hasil SE2016 Lanjutan; Potensi Peningkatan Kinerja Usaha Mikro Kecil. Jakarta: Stastics Indonesia, 2019.
- Direktorat Jenderal Pajak. 2013. "Surat Edaran Dirjen Pajak No SE-42/PJ/2013, tentang Tata Cara Pembebasan dari Pemotongan dan/atau Pemungutan Pajak Penghasilan Bagi Wajib Pajak yang Dikenai Pajak Penghasilan Berdasarkan PP No 46 Tahun 2013" Jakarta.
- Kementerian Keuangan. APBN KITA Edisi Januari 2019. Jakarta, 2019.
- Kementerian Keuangan. 2013. "Peraturan Menteri Keuangan Nomor 107 /PMK.011/2013, tentang Tata Cara Penghitungan, Penyetoran, Dan Pelaporan Pajak Penghasilan Atas Penghasilan Dari Usaha Yang Diterima Atau Diperoleh Wajib Pajak Yang Memiliki Peredaran Bruto Tertentu." Jakarta.
- . 2018. "Peraturan Menteri Keuangan Nomor 99 /PMK.03/2018, tentang Pelaksanaan Peraturan Pemerintah Nomor 23 Tahun 2018." Jakarta.
- Republik Indonesia. 2018. "Peraturan Pemerintah Nomor 23 Tahun 2018 Tentang Pajak Penghasilan atas Penghasilan Dari Usaha Yang Diterima atau Diperoleh Wajib Pajak Yang Memiliki Peredaran Bruto Tertentu." Jakarta: Sekretariat Negara.
- . 2013. "Peraturan Pemerintah Nomor 46 Tahun 2013 Tentang Pajak Penghasilan atas Penghasilan Dari Usaha Yang Diterima atau Diperoleh Wajib Pajak Yang Memiliki Peredaran Bruto Tertentu." Jakarta: Sekretariat Negara.
- . 2008. "Undang-Undang Republik Indonesia Nomor 20 Tahun 2008 Tentang Usaha Mikro, Kecil, dan Menengah." Jakarta: Sekretariat Negara.
- . 2008. "Undang-undang Republik Indonesia Nomor 36 Tahun 2008 tentang Perubahan Keempat atas Undang-undang Nomor 7 Tahun 1983 tentang Pajak Penghasilan." Jakarta: Sekretariat Negara.

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